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**Billing Code 4210-67**  
**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5 and 232**

**[Docket No. FR--5794-F-03]**  
**RIN 2502-AJ25**

**Federal Housing Administration (FHA): Section 232 Healthcare Facility Insurance Program – Aligning Operator Financial Reports with HUD’s Uniform Financial Reporting Standards**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** On September 16, 2014, HUD published an interim rule that revised the financial reporting deadlines for operators participating in FHA’s program for insurance of health care facilities under section 232 of the National Housing Act (Section 232 program) to bring them in-line with the reporting periods prescribed in HUD’s Uniform Financial Reporting Standards, to which owners and borrowers participating in the Section 232 program are subject. HUD received no public comments in response to its solicitation of comment in the September 16, 2014, rule, and is therefore adopting the interim rule without change.

**DATES:** *Effective date:* [Insert date that is 30 days after the date of publication in the Federal Register.]

**FOR FURTHER INFORMATION CONTACT:** Vance T. Morris, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6264, Washington, DC 20410-8000; telephone number 202-708-0599 (this is not a toll-free number). Persons with hearing or speech impairments may

access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### A. Background

Section 232 of the National Housing Act (12 U.S.C. 1715w) (Section 232) authorizes FHA to insure mortgages made by private lenders to finance the development of nursing homes, intermediate care facilities, board and care homes, and assisted living facilities (collectively, residential healthcare facilities). The Section 232 program allows for long-term, fixed-rate financing for new and rehabilitated properties for up to 40 years. Existing properties without rehabilitation can be financed with or without Ginnie Mae®<sup>1</sup> Mortgage Backed Securities for up to 35 years. Eligible borrowers under the Section 232 program include investors, builders, developers, public entities, and private nonprofit corporations and associations. The documents executed at loan closing provide that the borrower may not engage in any other business or activity. The Section 232 program regulations are codified in 24 CFR part 232.

In 2012, HUD commenced the rulemaking to update the Section 232 program regulations, regulations that had not been revised since 1996. By final rule published on September 7, 2012, at 77 FR 55120, HUD revised the Section 232 program regulations to reflect current policy and practices, and improve accountability and strengthen risk management in the Section 232 program. The September 7, 2012, final rule was preceded by a proposed rule published on May 3, 2012, at 77 FR 26304.

Included in the updates made by the 2012 rulemaking were revisions to 24 CFR 5.801 (Uniform Financial Reporting Standards) and 24 CFR 232.1009 (Financial Reports), both of

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<sup>1</sup> Ginnie Mae is a registered service mark of the Government National Mortgage Association; see <http://www.ginniemae.gov/>.

which contained reporting requirements applicable to the Section 232 program. HUD revised these regulatory sections to include operators of projects insured or held by HUD as entities that must submit financial statements to HUD. Owners and borrowers have long been required to submit financial reports

Sections 5.801(c)(4) and 232.1009 provide that operators must submit financial statements to HUD quarterly within 30 calendar days of the date of the end of each fiscal quarter, and 60 calendar days from the end of the fiscal-year-end quarter to submit final fiscal year end quarter and fiscal year-to-date reports to HUD. The other entities required to submit reports were provided slightly longer periods to prepare and submit the reports than that provided to operators. In the September 7, 2012, final rule, commenters asked that HUD extend the 30-day filing deadline for end-of-each quarterly report to 60 days. HUD declined to provide the extension and stated that receipt of unaudited quarterly and year-to-date operator financial statements promptly at the end of each quarter is needed for effective monitoring of a property's financial operations and the trend of those operations.

HUD's September 16, 2014, interim rule, published at 79 FR 55360, revised the Section 232 program regulation to increase the amount of time operators have to comply with the reporting requirements provided in §§ 5.801(c)(4) and 232.1009. In the interim rule, HUD advised that with almost two years of administering the Section 232 program under the revised regulations, HUD determined that it can provide operators additional time to submit financial reports and maintain the effective monitoring of a property's financial operations and the trend of those operations, which was of concern to HUD in the September 7, 2012, rule.

The September 16, 2014, interim rule provided operators with 60 calendar days following the end of a fiscal quarter and 90 calendar days following the end of the fiscal-year-end quarter

to comply with HUD's financial statement reporting requirements. HUD solicited comment on the changes made to Section 232 program regulations by the September 16, 2014, interim rule, but received no public comments in response to this solicitation.

On October 3, 2014, HUD published a notice in the Federal Register, at 79 FR 59646, announcing the commencement of compliance with the Uniform Financial Reporting Standards. Section 5.801(d)(4) of HUD's Uniform Financial Reporting Standards regulations provides that operators of projects with Section 232 insured mortgages (the entities described in § 5.801(a)(6)) must comply with the requirements of § 5.801 with respect to fiscal years commencing on or after the date that is 60 calendar days after the date on which HUD announces, through Federal Register notice, that it has issued guidance on the manner in which these reports will be transmitted to HUD. The October 3, 2014, notice served as the notice required by § 5.801(d)(4) that HUD has issued guidance on the manner in which the operator financial reports will be transmitted to HUD.<sup>2</sup> Accordingly, operators must comply with the operator financial report requirements for fiscal years commencing on or after December 2, 2014.

#### B. This Final Rule

As noted above, HUD received no public comments in response to the September 16, 2014, interim rule, and is adopting the interim rule without change.

### **Findings and Certifications**

#### Executive Order 13563, Regulatory Review

The President's Executive Order (EO) 13563, entitled "Improving Regulation and Regulatory Review," was signed by the President on January 18, 2011, and published on January 21, 2011, at 76 FR 3821. This EO requires executive agencies to analyze regulations that are

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<sup>2</sup> That guidance can be found under the Guidance for Lenders' Operator Financial Statement section at [http://portal.hud.gov/hudportal/HUD?src=/federal\\_housing\\_administration/healthcare\\_facilities/residential\\_care](http://portal.hud.gov/hudportal/HUD?src=/federal_housing_administration/healthcare_facilities/residential_care).

“outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Section 4 of the EO, entitled “Flexible Approaches,” provides, in relevant part, that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. HUD submits that the changes made by this rule to the Section 232 regulations are consistent with the EO’s directions as the rule reduces the burden on regulated parties by allowing for less restrictive reporting periods.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The changes required by this rule do not impose significant economic impacts on these small entities or otherwise adversely disproportionately burden such small entities. In fact, such small entities should benefit from the less restrictive reporting period. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited

to changing submission deadlines for required reports. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C.1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

#### Information Collection Requirements

The information collection requirements contained in this rule were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB Control Number 2502-0605. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information, unless the collection displays a currently valid OMB control number.

### Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the Mortgage Insurance Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities mortgage insurance programs is 14.129.

### **List of Subjects**

#### **24 CFR Part 5**

Administrative practice and procedure, Aged, Claims, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

#### **24 CFR Part 232**

Fire prevention, Health facilities, Loan programs-health, Loan programs-housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

## **PART 5 -- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

### **PART 232 – MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES**

Accordingly, the interim rule amending parts 5 and 232 of title 24 of the Code of Federal Regulations, which was published at 79 FR 55360 on September 16, 2014, is adopted as final without change.

Date: December 5, 2014

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Biniam Gebre  
Acting Assistant Secretary for Housing –  
Federal Housing Commissioner

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